

**United States District Court**  
EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	Case No. 4:12-CR-156 (6)
	§	Judge Mazzant
MARCOS RAMON MARTINEZ	§	
	§	

**MEMORANDUM OPINION AND ORDER**

Pending before the Court are Defendant’s Motion to Reinstate His Compassionate Release and Reduction of Sentence Under the First Step Act of 2018 (Dkt. #278) and Motion to Reinstate His Compassionate Release and Reduction of Sentence Under the First Step Act of 2018 (Dkt. #279). The Court, having considered the motions and the applicable law, finds that the motions should both be **DISMISSED without prejudice**.

**BACKGROUND**

On June 2, 2013, Marcos Ramon Martinez (“Martinez”) pleaded guilty to a charge of Conspiracy to Possess with Intent to Manufacture and Distribute 500 Grams or More of Methamphetamine and/or 50 Grams or More of Methamphetamine (actual) in violation of 21 U.S.C. § 846 and § 841 (a)(1) (Dkt. #120 at p. 8). On July 7, 2014, the Court sentenced Martinez to 360 months’ imprisonment and five (5) years of supervised release (Dkt. #191 at pp. 2–3). Martinez is serving his sentence at USP Hazelton, and his projected release date is February 5, 2042. *See* <https://www.bop.gov/inmateloc/> (Register Number: 20645-078).

On February 22, 2021, Martinez filed his first motion for compassionate release and reduction of sentence with the Court citing “family circumstances; health concerns; and COVID-19” (Dkt. #272 at p. 1). The Court denied his motion on March 17, 2021, without prejudice, finding that Martinez “had not exhausted all administrative remedies as required in 18 U.S.C. §

3582 (c)(1)(A)” (Dkt. #277).

According to the Bureau of Prisons (“BOP”), Martinez filed a request for reduction in sentence with the warden on March 24, 2021, citing a debilitated medical condition and incapacitation of a spouse or registered partner. His request was subsequently denied by the warden on April 23, 2021, finding that Martinez’s medical provider revealed that he “did not meet the criteria of debilitated.” On January 17, 2023, Martinez filed a second motion for compassionate release and reduction of sentence with the Court (Dkt. #278). On February 9, 2023, Martinez filed a third motion for compassionate release and reduction of sentence with the Court (Dkt. #279). Martinez’s pending motions raise three new grounds for a sentence reduction: (1) the COVID-19 pandemic, (2) his rehabilitation programming, and (3) nonretroactive post-sentence legal developments (Dkt. #278 at p. 4).<sup>1</sup>

## LEGAL STANDARD

### I. 18 U.S.C. § 3582(c)(1)(A)

A judgment of conviction imposing a sentence of imprisonment “‘constitutes a final judgment’ and may not be modified by a district court except in limited circumstances.” *Dillon v. United States*, 560 U.S. 817, 824 (2010) (quoting 18 U.S.C. § 3582(b)); *see also* 18 U.S.C. § 3582(c). One such circumstance arises from 18 U.S.C. § 3582(c)(1)(A)(i), commonly referred to as compassionate release.

Section 3582(c) was enacted as part of the Sentencing Reform Act of 1984. Under the first iteration of the relevant provision, district courts were authorized to grant sentence reductions on the motion of the Director of the Bureau of Prisons (“BOP”) if the BOP could establish the

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<sup>1</sup> The Court notes that the third motion for compassionate release, filed on February 9th, is nearly identical to the second motion for compassionate release. For the purposes of the Court’s analysis, the Court will treat them as identical motions, as Martinez fails to raise the appropriate arguments in either motion.

following conditions: (1) extraordinary and compelling reasons warranted a sentence reduction; (2) a reduction would be consistent with the applicable policy statements of the Sentencing Commission; and (3) a sentence reduction was warranted after consideration of the sentencing factors in 18 U.S.C. § 3553(a). *United States v. Shkambi*, 993 F.3d 388, 391 (5th Cir. 2021). Notably, Congress did not define “extraordinary and compelling reasons” or otherwise indicate how that phrase should be interpreted other than to specify that rehabilitation alone did not qualify. *Id.* (quoting 28 U.S.C. § 994(t)). Instead, Congress delegated that authority to the Sentencing Commission, directing it to “describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples.” 28 U.S.C. § 994(t).

The Sentencing Commission eventually followed Congress’s direction to define “extraordinary and compelling reasons” and promulgated United States Sentencing Guidelines (“U.S.S.G.”) § 1B1.13. In application note 1 to § 1B1.13, the Sentencing Commission described what circumstances constitute “extraordinary and compelling reasons” for purposes of § 3582(c)(1)(A)(i). U.S.S.G. § 1B1.13 cmt. n.1. The Sentencing Commission essentially created four categories of “extraordinary and compelling reasons,” which can broadly be characterized as: (1) circumstances arising from certain medical conditions; (2) circumstances arising from the age of the defendant;<sup>2</sup> (3) issues arising from the defendant’s family circumstances;<sup>3</sup> and (4) other reasons that the BOP agrees are extraordinary and compelling in a specific case. *Id.* And because

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<sup>2</sup> Specifically, a defendant, who is at least 65 years old, who “is experiencing a serious deterioration in physical or mental health because of the aging process” and also “has served at least 10 years or 75 percent of his or her term of imprisonment” may meet the requirement that “extraordinary and compelling reasons” exist. U.S.S.G. § 1B1.13, cmt. n.1(B).

<sup>3</sup> Such family circumstances exist where: (1) a defendant has minor children whose caregiver dies or becomes incapacitated; or (2) “incapacitation of the defendant’s spouse or registered partner when the defendant would be the only available caregiver for the spouse or registered partner.” U.S.S.G. § 1B1.13, cmt. n.1(C).

§ 3582(c)(1)(A) requires that any sentence reduction be consistent with the Sentencing Commission’s policy statements issued pursuant to § 994(t), the policy statements contained in § 1B1.13 were binding on district courts considering § 3582(c)(1)(A)(i) motions. *See United States v. Garcia*, 655 F.3d 426, 435 (5th Cir. 2011) (holding that the Sentencing Commission’s policy statements issued pursuant to 28 U.S.C. § 994 are binding on district courts when considering motions brought under 18 U.S.C. § 3582(c)).

In 2018, Congress amended § 3582(c)(1)(A) with the passage of the First Step Act. The amendment provided that, in cases where the BOP does not file a compassionate-release motion on the prisoner’s behalf, the prisoner may personally file a motion for compassionate release. *Shkambi*, 993 F.3d at 391–92. This was the First Step Act’s only change to the compassionate-release framework. *Id.* at 391. Thus, while prisoners, in addition to the BOP, may now file motions for compassionate release, § 3582(c)(1)(A)(i)’s substantive requirements that govern a prisoner’s entitlement to release remain the same. *See id.* at 392 (“But the [First Step Act] left undisturbed the other three § 3582 requirements.”).

Following the First Step Act’s expansion of who may file a motion under § 3582(c)(1)(A), courts were confronted with the question of whether the Sentencing Commission’s definition of “extraordinary and compelling reasons,” which was promulgated prior to the First Step Act when such motions could only be filed by the BOP, remained binding on district courts when considering compassionate-release motions. The Fifth Circuit addressed this question in *Shkambi*, holding that, while U.S.S.G. § 1B1.13 is a policy statement applicable to § 3582(c)(1)(A) motions filed by the BOP, it is inapplicable to § 3582(c)(1)(A) motions filed by prisoners. 993 F.3d at 392.<sup>4</sup>

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<sup>4</sup> Several other circuits have similarly concluded that U.S.S.G. § 1B1.13 is inapplicable to such compassionate-release motions filed by prisoners. *See, e.g., United States v. Aruda*, 993 F.3d 797, 802 (9th Cir. 2021) (per curiam); *United States v. McCoy*, 981 F.3d 271, 281 (4th Cir. 2020); *United States v. Brooker*, 976 F.3d 228, 230 (2d Cir. 2020). *But*

Accordingly, while U.S.S.G. § 1B1.13 dictates the meaning of “extraordinary and compelling reasons” when a § 3582(c)(1)(A) motion is filed by the BOP on a prisoner’s behalf, it does not do so when, as here, a § 3582(c)(1)(A) motion is filed by a prisoner himself. *See id.* (“[T]he policy statement continues to govern where it says it governs—on the motion of the Director of the [BOP]. But it does not govern here—on the newly authorized motion of a prisoner.” (internal quotations omitted)). Therefore, when a prisoner files a compassionate-release motion, courts must determine what constitutes an “extraordinary and compelling reason” under § 3582(c)(1)(A)(i).

## **II. Extraordinary and Compelling Reasons**

Though the Court is not bound by the Sentencing Commission’s policy statement in U.S.S.G § 1B1.13 and its accompanying application notes when considering compassionate-release motions filed by prisoners, the policy statement is not wholly irrelevant. Courts should still look to the policy statement for guidance in determining what constitutes “extraordinary and compelling reasons” for a sentence reduction when a prisoner files a compassionate-release motion. *See United States v. Thompson*, 984 F.3d 431, 433 (5th Cir. 2021) (“Although not dispositive, the commentary to the [U.S.S.G.] § 1B1.13 informs our analysis as to what reasons may be sufficiently ‘extraordinary and compelling’ to merit compassionate release.”); *see also*, *e.g.*, *United States v. Gunn*, 980 F.3d 1178, 1180 (7th Cir. 2020) (“The substantive aspects of the Sentencing Commission’s analysis in § 1B1.13 and its Application Notes provide a working definition of ‘extraordinary and compelling reasons’; a judge who strikes off on a different path risks an appellate holding that judicial discretion has been abused.”). Using the policy statement as guidance when considering prisoner-filed compassionate-release motions is warranted for

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*see United States v. Bryant*, 996 F.3d 1243, 1248 (11th Cir. 2021) (holding that U.S.S.G. § 1B1.13 is an applicable, binding policy statement for all § 3582(c)(1)(A) motions).

several reasons.

First, whether a compassionate-release motion is filed by the BOP or a defendant, the statutory standard governing the motion is the same. Section 3582(c)(1)(A) provides that its requirements for obtaining a sentence reduction apply “upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant.” 18 U.S.C. § 3582(c)(1)(A). And as noted above, the First Step Act did not change § 3582(c)(1)(A)’s substantive requirements. Thus, a policy statement defining “extraordinary and compelling reasons” in the context of BOP-filed motions necessarily informs what “extraordinary and compelling” means in the context of defendant-filed motions because the same standard governs both motions. In other words, § 3582(c)(1)(A)(i)’s “extraordinary and compelling reasons” phrase does not implicate shifting substantive meanings depending on who invokes the statute.

Congress’s application of a single standard to govern § 3582(c)(1)(A) motions—whether filed by the BOP or by defendants—is also evident in § 3582(c)(1)(A)’s exhaustion requirement. Before a prisoner can file a compassionate-release motion, he must first present his case to the BOP and request that the BOP file the motion on his behalf. *See* 18 U.S.C. § 3582(c)(1)(A). Fulfilling this exhaustion requirement would be a nonsensical exercise if the standard governing the defendant’s entitlement to release varied significantly depending on whether the BOP grants the defendant’s request. Defendants would request compassionate release based on the interpretation of “extraordinary and compelling reasons” applicable to their motions while the BOP would evaluate such requests based on the interpretation applicable to its motions. The fact that defendants must first ask the BOP to file their compassionate-release motions before doing it themselves indicates that Congress intended no significant substantive distinction between BOP-filed and defendant-filed motions under § 3582(c)(1)(A).

Indeed, § 1B1.13 does not become useless as guidance for defendant-filed compassionate-release motions simply because its terms state that it applies to motions brought by the Director of the BOP. Rather, § 1B1.13 and its accompanying application notes “provide a working definition of ‘extraordinary and compelling reasons’” because the standard applies equally to BOP motions and prisoner motions. *Gunn*, 980 F.3d at 1180. When the Sentencing Commission promulgated § 1B1.13, its intent was not to specify a unique standard for BOP motions but rather to define “extraordinary and compelling reasons” for purposes of § 3582(c)(1)(A).

Further, 28 U.S.C. § 994(t) does not direct the Sentencing Commission to adopt standards governing prisoner motions and standards governing BOP motions. Rather, § 994(t) directs the Sentencing Commission to “describe what should be considered extraordinary and compelling reasons for sentence reduction” under § 3582(c)(1)(A). And as the Sentencing Commission itself has explained, U.S.S.G. § 1B1.13 and its application notes constitute the Commission’s implementation of § 994(t)’s directive. *See* U.S.S.G. § 1B1.13 cmt. background (“This policy statement implements 28 U.S.C. § 994(a)(2) and (t).”). Because § 3582(c)(1)(A) governs BOP motions and prisoner motions alike, the Sentencing Commission’s definition of § 3582(c)(1)(A)’s terms is instructive when considering a prisoner’s motion brought under § 3582(c)(1)(A)(i).

For these reasons, the Court concludes that the “extraordinary and compelling reasons” applicable to defendant-filed motions are generally those that are similar in kind and scope to those listed in U.S.S.G. § 1B1.13’s application notes. To be clear, the “extraordinary and compelling reasons” contained in the Sentencing Commission’s policy statement are neither exhaustive nor binding on the Court. *Shkambi*, 993 F.3d at 392. But, in any event, the Court’s analysis of whether Defendant has presented “extraordinary and compelling reasons” warranting the sentence reduction he seeks will be significantly guided—though not strictly bound—by the Sentencing

Commission's description in U.S.S.G. § 1B1.13 and the accompanying application notes.

### **III. 18 U.S.C. § 3553(a) Factors**

Even if extraordinary and compelling reasons exist, they must outweigh the 18 U.S.C. § 3553(a) factors to warrant sentence reduction. *See* 18 U.S.C. § 3582(c)(1)(A). These factors are:

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed—
  - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
  - (B) to afford adequate deterrence to criminal conduct;
  - (C) to protect the public from further crimes of the defendant; and
  - (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- (3) the kinds of sentences available;
- (4) the kinds of sentence and sentencing range [provided for in the U.S.S.G.] . . .
- (5) any pertinent [Sentencing Commission] policy statement . . .
- (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
- (7) the need to provide restitution to any victims of the offense.

*Id.* § 3553(a).

### **ANALYSIS**

After being denied a sentence reduction once before, Martinez moves for compassionate release on three grounds: (1) the COVID-19 pandemic, (2) changes in the law, and (3) his record of rehabilitation (Dkt. #278 at p. 4). The Government has not responded. Because Martinez has not demonstrated that he has exhausted his administrative remedies as to the specific arguments

raised in the pending motion, the Court must dismiss both of Martinez's motions under § 3582(c)(1)(A).

The merits of Martinez's compassionate release motions may only be considered if he first meets § 3582(c)(1)(A)'s exhaustion requirement. Courts may not consider a modification to a defendant's sentence under § 3582(c)(1)(A)(i) unless a motion for such a modification is properly made by the Director of the BOP, by a defendant who has fully exhausted their administrative remedies, or by a defendant after thirty days have elapsed without receiving a response from the warden. 18 U.S.C. § 3582(c)(1)(A). Fully exhausting administrative remedies requires denial from the warden of a defendant's facility or waiting thirty days without receiving a response to a request, whichever is earlier.<sup>5</sup> *Id.* Importantly, § 3582(c)(1)(A)'s exhaustion requirement is not waivable. *See United States v. Rivas*, 833 F. App'x 556, 558 (5th Cir. 2020) ("Because the statutory language is mandatory—that a prisoner must exhaust their BOP remedy before filing in district court—we must enforce this procedural rule . . ."). If a defendant has not sought relief from the BOP, or has not waited thirty days since seeking relief, the Court may not consider his motion. Although Martinez *did* file a request with the warden that was ultimately denied, his motion fails to exhaust his administrative remedies for another reason.

The Court cannot consider a motion for compassionate release based on specific evidence or arguments not presented to the BOP first. *See United States v. Samak*, No. 91-189, 2020 WL 2473780, at \*2 (E.D. La. May 13, 2020) ("for a petitioner's request to the warden to exhaust administrative remedies in accordance with § 3582(c)(1)(A), the request must be premised on the same facts alleged in the corresponding motion filed with the court."); *United States v. Willis*, No.

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<sup>5</sup> BOP regulations define "warden" to include "the chief executive officer of . . . any federal penal or correctional institution or facility." 28 C.F.R. § 500.1(a); *United States v. Franco*, 973 F.3d 465, 468 (5th Cir. 2020); c.f. *United States v. Campagna*, 16 Cr. 78-01 (LGS), 2020 WL 1489829, at \*3 (S.D.N.Y. Mar. 27, 2020) (holding that "the denial of Defendant's request by the Residential Re-entry Manager suffices to exhaust his administrative rights").

09-0166, 2020 WL 5073663, at \*3 (E.D. La. Aug. 26, 2020) (noting that petitioner had not exhausted all administrative remedies because petitioner’s appeal to the court included new and different facts than was submitted to the prison). The BOP indicates Martinez submitted a request for a reduction in sentence to the warden on March 24, 2021, citing a debilitated medical condition and incapacitation of a spouse or registered partner. Martinez’s motions before the Court references three new grounds not brought before the warden. Martinez’s pending motions instead ask the Court to consider “Petitioner’s potential exposure to COVID-19, his natural antibodies, his vaccine, his medical conditions, his age, and his release plan” (Dkt. #278 at p. 10). In sum, Martinez’s pending motions make no reference to a “debilitated medical condition” or his spouse’s incapacitation, and therefore, the Court may not hear Martinez’s arguments at this time.

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Under the rule of finality, federal courts may not “modify a term of imprisonment once it has been imposed” unless one of a few “narrow exceptions” applies. *Freeman v. United States*, 564 U.S. 522, 526 (2011) (citing 18 U.S.C. § 3582(c)) (plurality op.); *see also Dillon*, 560 U.S. at 819 (same). Compassionate release is one of those exceptions, but a defendant must conform both to the procedural and substantive requirements of § 3582(c)(1)(A) for a court to modify a sentence. Because Martinez has not met the controlling requirements for compassionate release set forth in § 3582(c)(1)(A)(i), his motions must be denied.

### CONCLUSION

It is therefore **ORDERED** that Defendant’s Motion to Reinstate His Compassionate Release and Reduction of Sentence Under the First Step Act of 2018 (Dkt. #278) and Motion to Reinstate His Compassionate Release and Reduction of Sentence Under the First Step Act of 2018 (Dkt. #279) are hereby **DISMISSED without prejudice**.

**IT IS SO ORDERED.**

**SIGNED this 15th day of June, 2023.**

A handwritten signature in black ink, reading "Amos Mazzant". The signature is written in a cursive style with a horizontal line underneath the name.

AMOS L. MAZZANT  
UNITED STATES DISTRICT JUDGE